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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/065,244  
Filing Date: September 27, 2002  
Applicants: Zaidel, et al.  
Group Art Unit: 1614  
Examiner: Frederick F. Krass  
Title: Dual Component Tooth Whitening Dentifrice  
Attorney Docket: 2664-000021/US (IR No. 6963-00)

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Director of The United States Patent and Trademark Office  
P.O. Box 1450  
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**RESPONSE TO ELECTION OF SPECIES REQUIREMENT  
AND PETITION FOR EXTENSION OF TIME**

Sir:

Responsive to the Election of Species Requirement mailed June 15, 2004, for which the shortened statutory period was set for one-month and expired on July 15, 2004, Applicants hereby petition under the provisions of 37 C.F.R. § 1.136(a) for a three-month extension of time in which to respond to the outstanding Election of Species Requirement/Office Action. Accordingly, included herewith is a fee as set forth in 37 C.F.R. § 1.17(a) for such an extension of time.

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### **RESPONSE TO ELECTION REQUIREMENT**

The Examiner has asserted that the application contains three patentably distinct species of the claimed invention: 1) abrasive systems, 2) desensitizing compounds, and 3) peroxide-reactive dyes. The Examiner has required an election of a single species for prosecution.

Applicants respectfully traverse this election of species requirement on several grounds. First, each of the designated species identified by the Examiner are present as limitations in all of the claims, hence, none of the species appear as mutually exclusive limitations in any of the claims. The independent claims as originally filed (Claims 1 and 14) require a combination of both an abrasive system compatible with the peroxide (in a first aqueous dentifrice component containing a peroxide compound) and an abrasive incompatible with the peroxide compound (in a second aqueous dentifrice component), as well as a desensitizing compound in the second aqueous dentifrice component. Each and every claim including the claims that depend from independent Claims 1 and 14 (Claims 2-13 and 15-26, respectively) requires the presence of these limitations. It appears that an Examiner's Amendment was made on 9/23/2003 (described in the Notice of Allowance mailed 10/2/2003) introducing a limitation of "a peroxide reactive dye" to both independent Claims 1 and 14, which likewise imparts this limitation to all the claims with depend therefrom. Thus, the combination of each of these elements is present in all claims, and as such, the claims are not distinguishable as reading upon or being directed to different species.

Likewise, the Examiner determined that all of the claims are generic to the each of the species. MPEP §809.02(d) states that "[w]here only generic claims are presented, no restriction can be required except in those applications where the generic claims recite

such a multiplicity of species that an unduly extensive and burdensome search is necessary.” Here, the examination of only three species is not unduly extensive or burdensome, and Applicants traverse the election of species requirement on this ground, as well.

However, in accordance with the requirement for Applicants to elect a single species, Applicants select the following species as determined by the Examiner: 1) the abrasive systems. The abrasives systems comprise an abrasive system compatible with the peroxide (in a first aqueous dentifrice component containing a peroxide compound) and an abrasive incompatible with the peroxide compound (in a second aqueous dentifrice component). Applicants submit that claims 1-26 all read on the elected species selected above.


In the alternative, if the Examiner is seeking for Applicants to provide an example within each of the identified species to facilitate a streamlined search (instead of electing a single species), Applicants are providing in the alternative, the following elections. An elected example within the first species of 1) Abrasive systems is a calcium phosphate salt as the peroxide compatible abrasive system, and a silica abrasive as the peroxide incompatible abrasive. For the second species of 2) desensitizing compounds an elected example would be a potassium salt, and for the third species 3) an elected example of a peroxide reactive dye would be FD&C Green # 3 (sodium salt of tetraiodofluorescein).

**CONCLUSION**

In accordance with the remarks set forth above, Applicants believe that present response fully addresses the Election Of Species Requirement in the outstanding Office Action. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: 13 October 2004

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